United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

B 875

75-1207

To be argued by
FREDERICK P. HAFETZ

ORIGINAL

In The

United States Court of Appeals

For The Second Circuit

UNITED STATES OF AMERICA,

vs.

MARCE BELL,

Defendant-Appellant.

On Appeal from the United States District Court for the Southern District of New York

BRIEF FOR DEFENDANT-APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----------x

UNITED STATES OF AMERICA,

Appellee,

-against-

MARCE BELL,

Defendant-Appellant.

----------x

PRELIMINARY STATEMENT

Defendant Bell appeals from the judgment of conviction entered on May 19, 1975 in the United States District Court for the Southern District of New York after a non-jury trial (Honorable Dudley B. Bonsal).

Defendant Bell was charged in a one count indictment with possessing, receiving and transporting a firearm in commerce or affecting commerce [18 U.S.C. App. §1202(a)]. Convicted of all three offenses charged in count one, he was sentenced to serve a prison term of two years.

STATEMENT OF FACTS

THE GOVERNMENT'S CASE

William Frawley, a New York City policeman, testified that at approximately 4:30 P.M. on October 7, 1974 on the basis of his affidavit filed with a magistrate of the United States District Court for the Southern District, a warrant (Government Exh. 1) was issued to search defendant's residence at apartment 253, 1700 Harrison Avenue, Bronx, New York (9, 10, 21)*. At approximately 7 P.M. that evening, Frawley, in possession of the search warrant, arrived in the vicinity of 1700 Harrison Avenue together with other law enforcement agents for the purpose of executing the warrant; he estimated the total number of police officers and agents present at that time as ranging from seven to ten (22-3).

At 8 P.M. that evening, after observing defendant's building for one hour, Frawley, together with his fellow

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* References, unless otherwise noted, are to the typewritten minutes of the hearing on defendant's motion to suppress evidence and the trial. Upon consent of the Government and defendant's counsel and with the approval of the court, the hearing on the motion to suppress and the trial were consolidated. The minutes are reproduced in full in the appendix to defendant's brief.

officers, saw defendant and a woman exit from 1700 Harrison Avenue and walk to defendant's car parked on the opposite side of the street from his apartment house (12). The car had New Jersey license plates (14). Defendant walked around the side of the car and appeared to look at a tire of the car which Frawley later observed was flat (12). Defendant then opened the trunk, took out a spare tire and threw it to the ground (27). Ten minutes after defendant had exited the building, Frawley, through two-way radios possessed by the agents, communicated a decision that all agents should approach defendant (13, 32, 36).

The first agent to reach defendant was state police investigator Pazin, with Frawley to Pazin's rear (14, 37). When Pazin reached defendant, defendant was in the trunk of the car (14-15). Frawley next observed Pazin put his hands around defendant's waist on the outside of defendant's jacket and then reach under defendant's jacket and remove a gun from the right rear portion of his waist (Govt. Exh. 2; 15).

At this time defendant was placed under arrest and Frawley informed him of the search warrant for his apartment (16-17). The agents then brought defendant and the woman to the apartment, which they proceeded to search (17). Frawley testified that in the apartment, defendant "made

a statement that he bought the gun in Virginia a couple of years ago, I believe." (18-19). Later, at the prosecutor's office, defendant acknowledged that he had previously been convicted of manslaughter (18-20).

T. Barry Kingham, an Assistant United States Attorney, testified that on October 8, 1974, after advising defendant of his Miranda rights, defendant told him that he had purchased the gun in Virginia (95-6).

John O'Leary, an agent with the Bureau of Alcohol, Tobacco and Firearms, Department of Treasury, testified that his particular function with ATF was enforcement of the law and that he had never studied guns (84-5). He stated that on October 11, 1974, he received a gun, exhibit 2, which had been seized from defendant on October 7, 1974 (83).

O'Leary testified that the words "Made in Brazil" and the letters "INA" were inscribed on the gun, Exhibit 2 (84-6). Asked whether he knew if the letters "INA" and the words "Made in Brazil" had been placed on the gun in New York, Brazil or some place else, he replied that he did not know (86-7).

O'Leary further testified, that he had received documentation from his Washington office that the gun in question was manufactured in Brazil (89-90). He received no documentation from Brazil nor did he see any

documents from Brazil indicating that the gun was manufactured there (90). He had been advised that the INA corporation was no longer in existence and that its records had been destroyed (90).

POINT I

THE GOVERNMENT FAILED TO ESTABLISH DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

The statute in question, Title 18 U.S. Code, Appendix, Section 1202(a), provides in pertinent part:

> "Any person who ... has been convicted by a court of the United States or of a State ... of a felony and who receives, possesses or transports in commerce or affecting commerce, after the date of enactment of this Act, any firearm shall be fined not more than $10,000 or imprisoned for not more than two years or both."

This statute contains three disjunctive violations in regard to firearms - receipt, possession and transportation of a firearm.

The one-count indictment charged defendant with violation of all three of these offenses on or about October 7, 1974. Tried non-jury, defendant was convicted of all three crimes. The evidence at trial established that on October 7, 1974 while he was in the process of fixing a flat tire on a car, bearing New Jersey license plates, across the street from his apartment in the Bronx, defendant was found by police officers to be in possession of a pistol (12, 14-15). Defendant had previously been convicted of a felony (20). After his arrest defendant stated to the arresting officer

that he had purchased the gun in Virginia "a couple of years ago, I believe" (18-19). Over defense objection an Alcohol, Tobacco and Firearms Agent testified that there appeared on screws in this gun the words "INA" and "Made in Brazil", and that his Washington office had advised him that this gun was manufactured in Brazil (82-91). Viewed in the best light for the Government, this evidence was insufficient to establish defendant's guilt beyond a reasonable doubt of any of the three offenses of which he was convicted.

A. Possession and Receipt of a Firearm.

In U.S. v. Bass, 404 U.S. 336 (1971), the Supreme Court reviewed a conviction for possession of a firearm under Section 1202(a). The evidence there established that defendant was found to be in possession of a gun and that he had been previously convicted of a felony. There was no allegation in the indictment nor was there any proof at trial of possession "in commerce or affecting commerce". The issue before the Court was whether the phrase "in commerce or affecting commerce" in Section 1202(a) applied only to the transporting offense or whether it also applied to the other two offenses in the statute -- possession and receipt of a firearm. Affirming this Court's reversal of conviction [434 F.2d 1296 (2 Cir. 1970)], the Supreme Court ruled that

the commerce phrase did apply to the offenses of possession and receipt. In its opinion, the Court focused on the quantum of proof necessary to establish the interstate nexus in regard to the offenses of possession and receipt. Here, the Court, discerning a major distinction in the quantum of proof as to these two offenses, stated:

> "Having concluded that the commerce requirement in §1202(a) must be read as part of the 'possesses' and 'receives' offenses, we add a final word about the nexus with interstate commerce that must be shown in individual cases. The Government can obviously meet its burden in a variety of ways. We note only some of these. For example, a person 'possesses ... in commerce or affecting commerce' if at the time of the offense the gun was moving interstate or on an interstate facility, or if the possession affects commerce. Significantly broader in reach, however, is the offense of 'receiv[ing] ... in commerce or affecting commerce,' for we conclude that the Government meets its burden here if it demonstrates that the firearm received has previously traveled in interstate commerce." U.S. v. Bass, supra, at 350.

This sharp distinction recognized in Bass as to the requisite interstate nexus for possession and receipt convictions is demonstrated in the Seventh Circuit's decision in United States v. Walker, 489 F.2d 1353 (1973). There, the defendant was found to have received a gun in Illinois which eighteen months previously had been shipped from Florida to Illinois. Sustaining the conviction for receipt, the Court citing Bass, stated:

> "the differentiation between possession and receipt plainly indicates that no direct connection with commerce is required for the latter offense." Id. at 1357. See United States v. Thomas, 485 F.2d 557 (5 Cir. 1973).

Thus, these decisions make clear that in regard to the offense of receipt, the requisite interstate nexus is established by proof that the gun in question had sometime previously travelled interstate whereas in regard to the offense of possession, the interstate commerce element is more stringent - it requires proof of a direct connection between such commerce and possession of the gun.

In U.S. v. Fikes, 373 F.S. 1052 (E.D. Mich. 1974), the court addressed itself to the actual difference between the nature of the offenses of possession of receipt. The court stated:

> "The government states that when the defendant had possession of the shotgun on November 14, 1972, he was simultaneously 'in receipt' of the same firearm. Defendant does not agree, arguing that possession connotes a status, whereas receipt connotes an act. The definition of 'receive' supports this argument; that is, once the receiving - the act of taking into possession and control of an object - is completed, the person then merely possesses or controls the object. Receipt, being an act, is completed upon the doing of the act. The status of possession then begins. Receipt and possession not being synonymous, proof by the government of possession on or about November 14, 1972 is not proof of receipt at that time." Id. at 1056.

The reasoning of Fikes in rejecting the argument that the offenses of possession and receipt are synonymous, is sound and accords fully with the canons of statutory construction. As stated in Sutherland, Statutes and Statutory Construction (4th Ed., 1973), Section 46.06:

> "It is an elementary rule of construction that effect must be given, if possible, to every word, clause and sentence of a statute. A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant, and so that one section will not destroy another unless the provision is the result of obvious mistake or error." See U.S. v. Dinerstein, 362 F2d 852 (2 Cir. 1966).

Applying these principles to the instant case, it is clear that defendant's conviction of both possession and receipt of a firearm must be reversed.

1. Receipt.

The only proof as to defendant's receipt of the gun in the present case was the Government's introduction into evidence of an admission made after arrest by the defendant to an ATF agent and later repeated to an Assistant U.S. Attorney, that he had previously purchased the gun in Virginia. Thus, the offense of receipt here was committed not in the Southern District of New York but in the District

of Virginia. The Government therefore failed to satisfy its burden of establishing venue in the Southern District of New York.

In his opening statement to the trial court, counsel for defendant contended that as to the offense of receipt, the Government's proof would not establish venue in the Southern District of New York (7), and at the close of the case, counsel for defendant moved for judgment of acquittal as to the offense of receipt on the grounds that the Government had failed to prove venue in New York (118; see memorandum of law submitted by defendant to the court below at trial, record on appeal). The trial court erroneously denied defendant's motion for judgment of acquittal of the offense of receipt on the grounds of improper venue.

Additionally, the receipt conviction must be reversed because of the material variance between the indictment and the proof as to this offense. The indictment charged unlawful receipt of a firearm in New York on or about October 7, 1974. The evidence of receipt, which consisted of defendant's admission made on October 7, 1974, was that defendant had obtained the gun in Virginia "a couple of years ago" (18-19). Thus, the receipt offense proved at trial was an entirely different transaction than that set forth in the indictment. This substantial variance

between the date of the receipt offense alleged in the indictment and the proof as to date of this offense requires reversal of the conviction. Stirone v. United States, 361 U.S. 212 (1960); Russell v. United States, 369 U.S. 749 (1962).

Moreover, defendant's admission as to this offense was vague as to the date that he had actually purchased the gun in Virginia. Defendant told Frawley that this purchase had occurred "a couple of years ago, I believe" (18-19). Thus, this testimony is too uncertain to establish beyond a reasonable doubt that the instant indictment, filed on November 14, 1974, was brought within five years of defendant's commission of the receipt offense as required by statute. 18 U.S.C. §3282.

Beyond this bar to prosecution by the statute of limitations, the vagueness in defendant's admission as to the time of commission of the receipt offense requires reversal on additional grounds. Section 1202(a) proscribes only offenses committed after the date of its enactment on June 19, 1968. Because of this uncertainty in defendant's admission, the evidence failed to establish beyond a reasonable doubt that the receipt offense was committed after June 19, 1968.

For all of the foregoing reasons, defendant respectfully submits that reversal of the conviction of receipt of

a firearm is mandated.

2. Possession.

In denying defendant's motion for judgment of acquittal of the possession charge, the trial court stated that the following evidence established the requisite interstate commerce nexus: (1) the inscription of the words "Made in Brazil" on a screw in the gun in question; (2) defendant's admission that he had purchased the gun in Virginia several years ago; (3) the New Jersey license plates on the car on which defendant was working at the time he possessed the gun [118].

As to item (1), concerning the inscription of the words "Made in Brazil" on the gun - assuming arguendo that this evidence was admissible (discussed infra, Point I, Section B) - and item (2), concerning defendant's admission, all that these facts establish is that at some time in the past the gun that defendant possessed had travelled in interstate commerce. In Bass the Supreme Court, although holding that such evidence was sufficient to establish the interstate nexus in a charge of receipt, deemed this evidence insufficient to satisfy the interstate nexus as to the offense of possession. See United States v. Walker, supra.

As to item (3), the New Jersey license plates on the car on which defendant was working when arrested, this fact is manifestly insufficient to satisfy the interstate commerce requirement in regard to the possession offense. Again, the type of interstate activity necessary to satisfy this offense under Section 1202(a) is, as stated in Bass, proof that the gun was "moving interstate or on an interstate facility" or that the possession affected commerce. United States v. Bass, supra, at 350. The mere fact that defendant was fixing a car with New Jersey license plates at the time he was in possession of the firearm does not satisfy the "direct connection" with commerce mandated by Bass, United States v. Walker, supra at 357.

More fundamentally, the finding by the court below that the New Jersey license plates satisfied the commerce requirements of the possession charge, contravenes the firmly articulated reluctance of the Supreme Court in Bass to construe broadly the reach of a federal criminal statute in an area of law enforcement traditionally left to local authorities. Rejecting the expansive reading of the possession offense sought by the Government in Bass, the Court stated:

> "Congress has traditionally been reluctant to define as a federal crime conduct readily denounced as criminal by the States ... [W]e will not be quick to assume that Congress has

> meant to effect a significant change in the sensitive relation between federal and state criminal jurisdiction ... In the instant case, the broad construction urged by the Government renders traditionally local criminal conduct a matter for federal enforcement and would also involve a substantial extension of federal police resources. Absent proof of some interstate commerce nexus in each case, §1202(a) dramatically intrudes upon traditional State jurisdiction." United States v. Bass, supra at 349-50.

Affirmance of the possession conviction by this Court on the evidence here would be violative of the determination in Bass to limit the federal role in this area and would open up the federal courts to a plethora of prosecutions that should be brought in the state courts. In the modern world, virtually all persons engage in some type of interstate activity or use of interstate facilities. It is not difficult to foresee the minimal type of interstate activity upon which federal authorities would seize in bringing gun possession charges in federal court. The point of Bass, however, is that to warrant federal intrusion under Section 1202(a) into this traditionally local area of law enforcement, a direct relationship between commerce must be established as in the concrete examples set forth by the Court in its opinion.

Accordingly, defendant respectfully submits that his conviction for possession of a firearm must be reversed.

B. Transporting a Firearm.

In addition to convicting defendant of the possession and receipt offenses under §1202(a), the trial court also convicted defendant of the third offense under that section - transporting a firearm "in commerce or affecting commerce." In denying defendant's motion for judgment of acquittal of this offense, the court relied upon the same evidence to establish the interstate nexus as it did in convicting defendant of possession and receipt: (1) defendant's admission; (a) the New Jersey license plates on the car on which defendant was working when the gun was seized; (3) the inscription of the words "Made in Brazil" on the gun [118]. Upon analysis, however, this evidence does not establish defendant's guilt beyond a reasonable doubt of transporting a firearm "in commerce or affecting commerce."

In Henderson v. United States, 467 F.2d 904 (10 Cir. 1972), the court reviewed a conviction for the transporting offense under §1202(a). There, the defendant, while riding as a passenger in a car bearing Colorado license plates, was arrested in Oklahoma and found in possession of a gun. Reversing the conviction, the court held:

> "An essential element of the crime, interstate transportation, was established only by defendant's uncorroborated extra-judicial statements, and accordingly we reverse." id. at 905.

In so ruling, the Tenth Circuit relied primarily on the United States Supreme Court decisions in Opper v. United States, 348 U.S. 84 (1954) and Smith v. United States, 348 U.S. 147 (1954), both decided on the same date.

In Smith, tracing the history of this admission-corroboration rule, the Supreme Court stated that it:

> "lies in a long history of judicial experience with confessions and in the realization that sound law enforcement requires police investigations which extend beyond the words of the accused." Smith v. United States, supra, at 153.

In Opper, focusing on the quantum of evidence necessary to corroborate an admission, the Court held that the Government must:

> "introduce substantial independent evidence which would tend to establish the trustworthiness of the statement." Opper v. United States, supra, at 93.

The only evidence offered by the Government in Henderson to corroborate defendant's admission of interstate transportation of a firearm was the fact that the car in which he was arrested bore license plates of the state from which

he admitted having transported the gun. The Tenth Circuit rejected the government's contention that this was sufficient to corroborate defendant's admission that he had transported the gun in interstate commerce. Similarly, in the present case, the fact that at the time he was found to be in possession of the gun in question, defendant was in the process of fixing a flat tire on a car bearing New Jersey license plates, is no corroboration of his admission that he had transported the gun from Virginia.

The only other evidence offered by the Government in the instant case to corroborate defendant's statement that he had transported the gun interstate was the testimony of ATF agent O'Leary that the gun bore the words "Made in Brazil" and that he had received documentation from his Washington office that the gun had been manufactured in Brazil (82-91). This testimony was erroneously admitted and, in any event, even if properly admitted, did not furnish the corroboration required to convict defendant of the offense of transporting a firearm "in commerce or affecting commerce."

O'Leary's testimony that the gun bore the words "Made in Brazil" was inadmissible hearsay. Defense counsel objected to admissibility of this evidence throughout O'Leary's appearance on the witness stand (84, 85, 90).

Further, this testimony was also inadmissible because, as defense counsel noted in his objection, no foundation was laid for its admission. O'Leary conceded that he did not know whether the words "Made in Brazil" were placed on the gun in Brazil, New York or any other place, and stated that these words could have been placed on the gun in New York (84-7). Absent this proper foundation, O'Leary's testimony that the gun bore the words "Made in Brazil" was erroneously admitted.

In addition to this testimony, O'Leary also was permitted to testify over defense objection that he had received documentation from the ATF office in Washington that the gun in question had been manufactured in Brazil (88-91). Although the trial court did not rely on this testimony in reaching its verdict (115-18), nevertheless, its admissibility and relevance will be discussed here.

After cross-examination of O'Leary demonstrated that he was not an expert in guns and that he did not know whether the words "Made in Brazil" were in fact placed on the gun in New York, the court then attempted to ascertain whether the agent had seen guns with similar markings previously (88-9). O'Leary answered affirmatively. At this point, to counter any inference from O'Leary's answer that he might be an expert in this type of gun, defense

counsel asked him: "Officer, do you know of your own knowledge where this gun was manufactured?" (89). This question obviously called for a "yes" or "no" answer, and was intended to determine whether the agent had actually observed this type of gun being manufactured in Brazil. Indeed, the government in objecting to this question apparently construed it as limiting O'Leary to an answer based on actual observations in Brazil (89).

Overruling the government's objection, the court permitted the agent to answer the question (89). As O'Leary started to answer by stating "I inquired from our - -", defense counsel, observing that O'Leary was not giving a "yes" or "no" answer and that he was about to testify on the basis of hearsay rather than actual observation, objected to the answer by interrupting it and requesting that the agent confine his answer to his "own knowledge" (89). The court overruled the objection on the grounds that defense counsel had opened the door for hearsay evidence and permitted the agent to proceed with his hearsay answer that he had received information from his Washington office that the gun had been manufactured in Brazil (89-90).

Clearly, defense counsel's question did not open the door for hearsay. To the contrary, counsel's question sought not information O'Leary had ascertained from others, but

only non-hearsay information from his "own knowledge". The court erroneously and unfairly construed this question to embrace hearsay testimony, and persisted in this construction after defense counsel cut off the hearsay reply that the agent started to give. Moreover, the trial court's application of the opening the door doctrine here is misplaced. This doctrine "is an application of the principle of 'completeness'". United States v. Corrigan, 168 F.2d 641, 645 (2 Cir. 1948); see United States v. Provo, 215 F.2d 531, 535 (2 Cir. 1954). Under this doctrine where one party introduces only a "detrimental" portion of a "document or a correspondence or conversation", the other party may introduce the balance of that document or correspondence. United States v. Corrigan, supra. In the instant case, at the point that the court ruled that the door had been opened for hearsay testimony by O'Leary, defense counsel had not put into evidence any portion of "a document, or a correspondence or a conversation" Id. Thus, there was no basis for the court's ruling that defense counsel had opened the door for the hearsay testimony given by O'Leary. In sum, O'Leary's testimony as to receipt of information from his Washington office was erroneously admitted.

However, even assuming arguendo the admissibility

of O'Leary's testimony that the gun bore the words "Made in Brazil" and that his Washington office had told him that the gun was manufactured in Brazil, this evidence did not constitute the requisite corroboration of defendant's admission. As stated by the Supreme Court in Opper v. United States, supra at 93, the independent corroborative evidence must both be "substantial" and "tend to establish the trustworthiness of the statement". O'Leary's testimony was neither substantial corroboration nor did it tend to establish the trustworthiness of defendant's admission. His testimony as to the place of manufacture of the gun was not only hearsay, but also there was no basis for crediting it as reliable. For example, O'Leary did not even state that he or anyone in his Washington office had ever seen documents from the alleged Brazilian manufacturer indicating that the gun in question was made there.*

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*Even had he seen such documents, his testimony as to their contents would, of course, be inadmissible hearsay. Admission of documents from the Brazilian manufacturer showing that it manufactured the gun here in question required testimony by a company official familiar with such records - assuming that they existed - that they were kept in the regular course of business and that it was the company's regular course of business to keep such records. 28 U.S.C. §1732.

More significant, even assuming that the testimony of manufacture in Brazil was "substantial", this testimony in no way tends to establish the "trustworthiness" of defendant's admission that he transported the gun from Virginia to New York. Ibid. In fact, these two items of proof are unrelated. The fact that the gun originated in Brazil does not "fortif[y] the truth" [Smith v. United States, supra at 156] of the defendant's statement that he purchased the gun in Virginia and transported it to New York.

As noted in Smith, the rationale of the federal rule requiring corroboration of confessions is that confessions are often unreliable. No part of O'Leary's statement gives basis to a fact-finder for belief that defendant's confession was truthful. The type of bolstering evidence required here is, for example, independent proof that the gun was in Virginia or sold in Virginia at approximately the time of defendant's admitted purchase there. This type of independent evidence is utterly lacking in the present case.

In addition to this insufficiency of evidence, the transporting conviction must also be reversed because of a material variance between the indictment and the proof.

The indictment charged defendant with unlawfully transporting a firearm in commerce on or about October 7, 1974. The only proof as to defendant's transporting a firearm was his admission that he had done so at some time prior to his arrest on October 7, 1974 (18-19). Thus, the offense to which defendant admitted was not the one for which he was indicted - he admitted to an offense committed at least several years prior to the act charged in the indictment. This material variance between the indictment and the evidence at trial requires reversal of defendant's conviction of transporting a firearm. Stirone v. United States, 361 U.S. 212 (1960); Russell v. United States, 369 U.S. 749 (1962).

Finally, as discussed in an earlier section of this brief, defendant's admission to officer Frawley that he had purchased the gun in Virginia "a couple of years ago, I believe", was too vague to establish beyond a reasonable doubt that the indictment here, filed on November 14, 1974, was brought within five years of defendant's commission of the transporting offense as required by statute. 18 U.S.C. §3282. And, this evidence was also too uncertain to prove beyond a reasonable doubt that the transporting offense occurred after the date of enactment of Section 1202(a)

on June 19, 1968.

Accordingly, for these reasons, reversal of defendant's conviction for transporting a firearm is required.

CONCLUSION

THE JUDGMENT OF CONVICTION SHOULD BE REVERSED.

Respectfully submitted,

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Appellant Bell

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

against

MARCE BELL,

Defendant-Appellant.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK *ss.:*

James A. Steele *being duly sworn,*

deposes and says that deponent is not a party to the action, is over 18 years of age and resides at
310 W. 146th St., New York, N.Y.

That on the **15th** *day of* **July** *1975 at* **1 St. Andrews Place, N.Y., N.Y.**

deponent served the annexed Brief *upon*
Paul J. Curran

the **U.S. Attorney** *in this action by delivering* 2 *a true copy* ES *thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the* *herein,*

James A. Steele
Print name beneath signature
JAMES A. STEELE

Sworn to before me, this **15th**
day of **July** *19* **75**

Robert T. Brin

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1977